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EXAMINER

COMSTOCK, DAVID C

ART UNIT	PAPER NUMBER
3732	

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Please find below and/or attached an Office communication concerning this application or proceeding.

Interview Summary	Application No. 10/617,935	Applicant(s) DROGIN ET AL.	
	Examiner David Comstock	Art Unit 3732	

All participants (applicant, applicant's representative, PTO personnel):

(1) David Comstock. (3)_____.

(2) Catherine Drogin. (4)_____.

Date of Interview: 26 August 2004.

Type: a) ☒ Telephonic b) ☐ Video Conference
c) ☐ Personal [copy given to: 1) ☐ applicant 2) ☐ applicant's representative]

Exhibit shown or demonstration conducted: d) ☐ Yes e) ☒ No.
If Yes, brief description: _____.

Claim(s) discussed: 1-12 and proposed 13-18.


Identification of prior art discussed: Esker et al. (5,946,773); Daly et al. (910,914).

Agreement with respect to the claims f) ☐ was reached. g) ☐ was not reached. h) ☒ N/A.


Substance of Interview including description of the general nature of what was agreed to if an agreement was reached, or any other comments: Applicant's proposed amendment (see attachment) would overcome the rejection made under 35 USC 112 and would overcome the rejections based on Daly et al.; however, it would not make the claims allowable over at least Esker et al. Examiner did not find allowable subject matter in the disclosure. It is noted that Applicant gave Examiner permission to attach the proposed amendment.

(A fuller description, if necessary, and a copy of the amendments which the examiner agreed would render the claims allowable, if available, must be attached. Also, where no copy of the amendments that would render the claims allowable is available, a summary thereof must be attached.)

THE FORMAL WRITTEN REPLY TO THE LAST OFFICE ACTION MUST INCLUDE THE SUBSTANCE OF THE INTERVIEW. (See MPEP Section 713.04). If a reply to the last Office action has already been filed, APPLICANT IS GIVEN ONE MONTH FROM THIS INTERVIEW DATE, OR THE MAILING DATE OF THIS INTERVIEW SUMMARY FORM, WHICHEVER IS LATER, TO FILE A STATEMENT OF THE SUBSTANCE OF THE INTERVIEW. See Summary of Record of Interview requirements on reverse side or on attached sheet.


EDUARDO C. ROBERT
 PRIMARY EXAMINER

Examiner Note: You must sign this form unless it is an Attachment to a signed Office action.


 Examiner's signature, if required

DRAFT CLAIM AMENDMENTS FOR DISCUSSION

What is claimed is:

1. A tongue depressor for receipt within a mouth of a patient during an examination, comprising:

a blade comprising first and second sides separated by a thickness of said blade, said blade further comprising first and second tongue contact portions located along said first and second sides, respectively; and

an ornamental image appearing along at least a portion of at least said first tongue contact portion of said first side;

Wherein said tongue depressor is not coated with flavor;

Wherein both ends of said tongue depressor may be safely received within said mouth of said patient during said examination without causing any discomfort or physical harm;

wherein any portion of said tongue depressor blade may be received within said mouth of said patient during said examination, even if said any portion of said tongue depressor has said ornamental image appearing therealong.

2. A tongue depressor as recited in claim 1, said ornamental image appearing along both said first tongue contact portion and said second tongue contact portion of said blade.

3. A tongue depressor as recited in claim 1, further comprising another ornamental image appearing along at least a portion of at least said second tongue contact portion of said blade, wherein even a portion of said tongue depressor blade bearing said another ornamental image may be received into said mouth of said patient.

4. A tongue depressor as recited in claim 3, wherein said ornamental image and said another ornamental image are the same.

5. A tongue depressor as recited in claim 3, wherein said ornamental image and said another ornamental image are different.

6. A tongue depressor as recited in claim 3, wherein said ornamental image and said another ornamental image are made of non-toxic ink [approved by the U.S. Food and Drug Administration] for application to items to be received within a person's mouth.

7. [A tongue depressor as recited in claim 1, further comprising a flavor coating along at least a portion of said blade].

8. A tongue depressor as recited in claim 1, wherein said tongue depressor is made of wood.

9. A tongue depressor as recited in claim 1, wherein said tongue depressor is made of plastic.

10. A tongue depressor as recited in claim 1, wherein said tongue depressor is made of cardboard.

11. A tongue depressor as recited in claim 1, wherein said tongue depressor is sterile.

12. An apparatus for motivating the cooperation of youthful patients in oral examinations, comprising a tongue depressor for restraining a tongue of a patient to allow clearer examination of a rear of a patient's mouth and throat, comprising a blade having two elongated, substantially flat surfaces for restraining said tongue of said patient, at least one of said two surfaces bearing an ornamental image along at least a portion thereof intended to be inserted into said patient's mouth, said ornamental image being made from non-toxic [U.S. Food and Drug Administration approved] ink.

13. A tongue depressor as recited in claim 3, wherein said ornamental image and said another ornamental image substantially cover the entire surface of said blade;

14. A tongue depressor as recited in claim 3, wherein said ornamental image and said another ornamental image include designs that appeal to children;

15. A tongue depressor as recited in claim 3, wherein said ornamental image and said another ornamental image contain designs with repeating patterns from end to end of blade;

16. A tongue depressor as recited in claim 3, wherein said ornamental image and said another ornamental image consist of two or more colors.

17. A tongue depressor as recited in claim 1, wherein said tongue depressor has a thickness of a standard tongue depressor, generally 2mm or less.

18. A blade like object suitable for children to use and enjoy outside the medical environment, comprising a blade having two elongated, substantially flat

surfaces, at least one of said two surfaces bearing an ornamental image along at least a portion thereof, said ornamental image being made from non-toxic ink,

Wherein said blade is not coated with flavor;

wherein both ends and both sides of said blade may be received within the mouth of said children.

REMARKS

REJECTIONS UNDER 35 USC 102(b)

Claim 1 was rejected under 35 USC 102(b) as being anticipated by Daley et al (910,914) and Esker et al (5,946,773). The claim has been amended to specify that both sides of the tongue depressor are safe to go in the mouth and cause no discomfort to the patient during an oral examination. Applicant requests reconsideration of these rejections for the following reasons:

(1) Tongue depressors are used by doctors to depress the tongue and look inside a patient's mouth during oral examinations. Daily et al describes a plurality of forks made of thin wood, where "each wooden strip is provided with a reentrant angle at one or both ends, so as to form tines or prongs." If used by a doctor during an oral examination, these tines/prongs could be harmful to the patient. This is especially true if the patient is a child, scared of the oral examination, and likely to move, struggle, or jerk away during the examination. In addition, tines are equally unsuitable as a gripping area for doctors to hold when using the tongue depressor. Just as any other potentially harmful instrument (e.g., knife blade) would not be suitable to be used as a tongue depressor, neither would the forks described in the prior art.

(2) Similarly, Esker et al describes a device for holding frozen food which has an irregularity on one side. Such an irregularity, which includes "protrusion extending from first surface", "projection from the edge", or "indentations in the edge", prevents this end from functioning as a suitable tongue depressor since it could cause discomfort and/or physical harm when used in the mouth to depress the tongue. For example, the protrusion, projection or indentations could scrape, rub or injure the inside of the mouth

during the examination. Protrusions and projections could also potentially break-off, thereby creating a choking hazard.

REJECTIONS UNDER 35 USC 103(a)

Claim 1 was rejected under 35 USC 103 (a) as being unpatentable over Chen et al. (2004/0109932) in view of Esker et al. The claim has been amended to specify that the tongue depressor is not coated with flavor.

Chen describes methods and coating compositions for producing a flavor coated drinking straw or other article, including a tongue depressor. The prior art does not include any reference to decoration nor is there any motivation in the prior art to remove the flavor coating, or to substitute the flavor coating for an ornamental image.

Esker discloses a device for holding food. There is no reference in the prior art to flavor coating on the device, nor is there any reference to a tongue depressor.

Since the prior art references do not include any suggestion they be combined, applicant requests reconsideration.

REJECTIONS UNDER 35 USC 112

Claims 6 and 12 were rejected under the first paragraph and second paragraphs of 35 USC 112. These claims have been changed to reflect a definition of ink that cannot change over time, thereby changing the scope of the claim.